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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ BAIL APPLN. 702/2012

VISHAL SINGH

..... Petitioner

Through: Mr. Neeraj Kumar Jain, Senior Advocate
with Mr. Sanjay Singh, Advocate.

versus

CBI

..... Respondent

Through: Mr. Manoj Ohri, Spl. PP for CBI.

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Date of Decision: 05th October, 2012

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J. (Oral)

1. Present petition has been filed seeking regular bail in Case RC No. 3(S)/2003/CBI/SCB-II registered under Section 120B read with Sections 302/307/326/506(ii) IPC.
2. Mr. Neeraj Kumar Jain, learned senior counsel for petitioner submits that three witnesses namely, Mr. Suresh Kumar Singh, Mr. Shiv Prasad Tiwari and Mr. Anirudh Prasad Rai-Jailor of Gyanpur Jail who had made allegations against the petitioner in 161 Cr. P.C. statements to the Central Bureau of Investigation have not supported the case of prosecution and have turned hostile. He further states that despite the said witnesses having been declared hostile and subjected to cross-examination, they have not leveled any allegation against the petitioner. Consequently, he submits that it is a case of no evidence

against the petitioner and petitioner deserves to be enlarged on bail. He also points out that petitioner, who is a police official, has been in custody for nearly seven years.

3. Mr. Manoj Ohri, learned Special Public Prosecutor for Central Bureau of Investigation points out that the present case has been registered on orders passed by the High Court of Uttar Pradesh at Allahabad. He states that present case pertains to murder of late Mr. Rakesh Pandey an injured eyewitness and a complainant of triple murder case popularly known as Vakil Shukla murder case. In the triple murder case, the principal accused was one Mr. Udai Bhan Singh who according to the Central Bureau of Investigation is a notorious criminal and history-sheeter of Uttar Pradesh besides being a former MLA.

4. It is the case of Central Bureau of Investigation that Mr. Udai Bhan Singh did not want the deceased eyewitness to the triple murder case to depose against him and therefore, when the deceased refused to accept bribe of ₹5,00,000/-, Mr. Udai Bhan Singh at that time lodged in Gyanpur Jail entered into a criminal conspiracy when many other co-accused including the assailant Mr. Santosh Kumar Singh @ Tinkoo and the present petitioner to have the deceased assassinated. It is pertinent to mention that now Mr. Udai Bhan Singh stands convicted right upto the Supreme Court in the triple murder case.

5. In the reply affidavit filed by the Central Bureau of Investigation, it has also been stated as under:-

“IX. During investigation it was disclosed that Vishal Singh, Constable was seen frequently with one of the assailant in the Gyanpur Jail premises. Further, Vishal Singh gave shelter to the assailant Santosh Singh @ Tinkoo Singh in his quarter at Gyanpur, opposite to Gyanpur Jail. As already stated, the decision to murder Rakesh Pandey by Udai Bhan Singh along with Vishal Singh, Sandeep Singh and others was taken in Gyanpur Jail.

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II. That contrary to the claim of the petitioner/accused, CBI investigation has disclosed that this accused used to visit co-accused Udai Bhan Singh in Gyanpur Jail and was a part of criminal conspiracy, in pursuance to which he had sheltered the assailant co-accused Santosh Kumar Singh @ Tinkoo in his quarter within jail premises, which the petitioner himself states in para 2 that said quarter have been allotted to his wife.”

(emphasis supplied)

6. Mr. Manoj Ohri, learned Special Public Prosecutor further points out that certain other witnesses who are yet to depose in this case have communicated in writing to the Special Judge, CBI as well as to Central Bureau of Investigation that they are under constant threat and, therefore, cannot openly depose.

7. Having heard the parties, this Court keeping in view the gravity of the crime as well as the fact that witnesses are still under threat, is not inclined to grant bail to the present petitioner.

8. This Court is also of the view that the reply filed by the Central Bureau of Investigation discloses a sorry state of affairs in a matter which has been transferred to the Delhi Courts by the Apex Court. Not only, ordinary witnesses, but a police official who happened to be a jailor of Gyanpur Jail has turned hostile during the trial.

9. Consequently, in exercise of supervisory jurisdiction, this Court directs the Special Judge, CBI to examine the matter and if need be, suo moto take

remedial measures including by putting in place a witness protection system by relying upon a Division Bench judgment of this Court in *Neelam Katara vs. Union of India, ILR (2003) II Delhi 377*. The trial court would also be entitled to re-summon any witness, who it feels has deposed under threat.

10. Accordingly, the present petition is dismissed. It is made clear that the observations made by this Court would not prejudice either of the parties at the stage of trial.

MANMOHAN, J

OCTOBER 05, 2012

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